

05/22/2023

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CLERKMontana Water Court
STATE OF MONTANA

By: D'Ann CIGLER

43B-0714-R-2022

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4.00

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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Fred Anders; Lillie V. Anders; David R. Hutchings;
Rebecca A. Hutchings

CASE 43B-0714-R-2022

43B 199185-00

43B 199188-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

On October 18, 2022 the Court issued the Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA. The Order includes the following:

Claims 43B 199185-00 and 43B 199188-00 each appeared in the Preliminary Decree with the following issue remarks which need to be addressed and resolved:

IT APPEARS FROM INFORMATION IN THE FILE THAT THIS RIGHT HAS NOT BEEN USED SINCE 1969.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESENE SEC 11 TWP 3S RGE 9E PARK COUNTY.

* * * * *

As this issue remarks will not be addressed and resolved through the objection process, the Legislature has directed the Water Court to resolve issue remarks using the procedures set forth in section 85-2-248, MCA. Section 85-2-248(5), MCA, states:

(5)(a) The water court shall require the claimant to confer with the department in an informal effort to resolve any identified issue remarks.

(b) If an issue remark is resolved to the satisfaction of the department and the claimant, the claimant, with the assistance of the department, shall prepare and file any documents that are needed to support the resolution. The department shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.

(c) If an issue remark is not resolved, the department shall file a notice with the water court informing the water court that the issue remark was not resolved.

Therefore, pursuant to section 85-2-248(5)(a)(b) and (c), MCA, it is ORDERED that the **claimants** no later than **November 18, 2022**, shall telephone Kerri Strasheim, Water Resources Supervisor Specialist with the Montana Department of Natural Resources and Conservation ["DNRC"] at (406) 586-3136 to make an appointment to confer with a DNRC claim examiner to resolve the issue remarks.

If the claimants and the DNRC are able to resolve the issue remarks, it is ORDERED that the **claimants**, with the assistance of the DNRC, shall

prepare and file any documents that are needed to support the resolution by **January 18, 2023**, and

ORDERED that the **DNRC employee** who met with the claimants shall file a separate memorandum with recommendations regarding the disposition of the issue remarks and shall send a copy of that memorandum to the claimants by **February 1, 2023**.

If the conference between the claimants and the DNRC does not resolve the issue remarks, it is

ORDERED that the **DNRC employee** who met with the claimants shall file a memorandum with the Water Court informing the Water Court that the issue remarks were not resolved with the claimants, if possible make any recommendations to the Court to resolve the issue remarks, and send a copy of that memorandum to the claimants by **February 1, 2023**.

If this informal effort to resolve the issue remarks is unsuccessful, the Court will proceed as directed in subsections (6) through (11) of section 85-2-248, MCA.

Claimants Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings filed nothing by their January 18, 2023 filing deadline. On February 1, 2023 the DNRC filed its Memorandum. The Memorandum states that none of the claimants contacted the DNRC. The Memorandum then recommends the claims be “withdrawn” as they have not been used since 1969. The Memorandum Service List states that a copy of this Memorandum was mailed to Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings. The Memorandum did not prompt a response from the claimants.

The February 13, 2023 Order Entering Defaults And Setting Show Cause Deadline includes the above history and states:

As Claimants Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings failed to comply with the Court’s October 18, 2022 Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA, pursuant to section 85-2-248(9)(d), MCA, Rule 55(a), M.R.Civ.P., and Rule 22, W.R.Adj.R., it is

ORDERED that the defaults of Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings are ENTERED, and

ORDERED that the deadline is **March 14, 2023** for Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings to show cause in writing why the Court should not conclude that these claimed water rights are abandoned because they have not been used since 1969 and to show cause in writing why the Court should not proceed with dismissing claims 43B 199185-00 and 43B 199188-00.

Nothing was filed by the claimants.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

Sections 85-2-248(9)(d), MCA, states in part:

(9) If a claimant . . . fails to comply with an order issued by the water court in its review of issue remarks, the water court upon motion or its own initiative, may, in its ruling:

(d) terminate the claim.

Rule 22, W.R.Adj.R., states in part:

RULE 22. SANCTIONS. If a claimant . . . fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim.

FINDING OF FACT

Fred Anders, Lillie V. Anders, David R. Hutchings, and Rebecca A. Hutchings failed to show cause in writing why the Court should not conclude that these claimed water rights are abandoned because they have not been used since 1969 and failed to show cause in writing why the Court should not proceed with terminating claims 43B 199185-00 and 43B 199188-00.

CONCLUSION OF LAW

The DNRC Memorandum, the failures of the claimants to show cause in writing why the Court should not conclude that these claimed water rights are abandoned because they have not been used since 1969, and the failures of the claimants to show cause in writing why the Court should not proceed with terminating claims 43B 199185-00 and 43B 199188-00, are sufficient to terminate these claims. Section 85-2-248(9)(d), MCA, and Rule 22, W.R.Adj.R.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court terminate claims 43B 199185-00 and 43B 199188-00 pursuant to section 85-2-

248(9)(d), MCA, and Rule 22, W.R.Adj.R. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended terminations have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Fred E. Anders
Lillie V. Anders
14926 Buxley St
Houston, TX 77053-1102

David R. Hutchings
Rebecca A. Hutchings
224 Watchmen Ln
Cameron, NC 28326-4512

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: **43B 199185-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: FRED E ANDERS
 % LILLIE ANDERS
 14926 BUXLEY ST
 HOUSTON, TX 77053 1102

 LILLIE V ANDERS
 14926 BUXLEY ST
 HOUSTON, TX 77053 1102

 DAVID R HUTCHINGS
 224 WATCHMEN LN
 CAMERON, NC 28326 4512

 REBECCA A HUTCHINGS
 224 WATCHMEN LN
 CAMERON, NC 28326 4512

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: **43B 199188-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners:

FRED E ANDERS
% LILLIE ANDERS
14926 BUXLEY ST
HOUSTON, TX 77053 1102

LILLIE V ANDERS
14926 BUXLEY ST
HOUSTON, TX 77053 1102

DAVID R HUTCHINGS
224 WATCHMEN LN
CAMERON, NC 28326 4512

REBECCA A HUTCHINGS
224 WATCHMEN LN
CAMERON, NC 28326 4512

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.